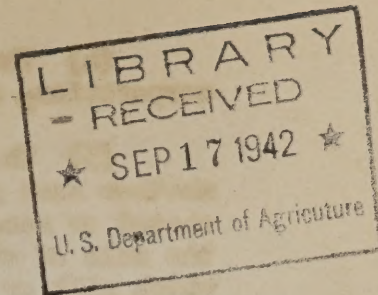


UNITED STATES DEPARTMENT OF AGRICULTURE

NOTICE OF HEARING ON CUMBERLAND, MARYLAND,
MARKETING AREA MILK HANDLING



Notice is hereby given of a hearing to be held at the City Hall Auditorium, Cumberland, Maryland, beginning at 10:00 a.m., e.w.t., August 17, 1942, with respect to a proposed marketing agreement and a proposed order regulating the handling of milk in the Cumberland, Maryland, marketing area.

This notice is given pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 1940 *et seq.*), and in accordance with the applicable rules of practice thereunder (7 CFR 900.1 - 900.17; 6 F.R. 6570, 7 F.R. 3350).

This public hearing is for the purpose of receiving evidence with respect to a proposed marketing agreement and order, the provisions of which are hereinafter set forth in detail, which has been proposed, with the exception of sections 10 through 13, by the Tri-State Milk Producers Association. Sections 10 through 13 are standard provisions and have been included in the proposal at the request of the Agricultural Marketing Administration. The proposal provides for the payment to producers on the so-called market-wide pool basis. Evidence will also be received at the hearing with respect to the payment to producers through the use of the so-called individual handler's pool. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture, and at the hearing evidence will be received relative to all aspects of the marketing conditions which are dealt with by the proposed marketing agreement and order. The provisions of the proposed marketing agreement and order are as follows:

Sec. 1 Definitions. (a) Terms. The following terms shall have the following meanings:

(1) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(2) The term "Secretary" means the Secretary of Agriculture of the United States.

(3) The term "Cumberland marketing area", hereinafter referred to as the "marketing area", means the territory included within 18 miles of the City Hall in the city of Cumberland.

(4) The term "person" includes any individual, partnership, corporation, association, or any other business unit.

(5) The term "producer" means any person, irrespective of whether such person is also a handler, who produces milk which is purchased or received by a handler at a plant approved or licensed for the sale of milk for fluid consumption in the marketing area, and from which milk or cream for bottling purposes is disposed of in the marketing area.

(6) The term "handler" means any person, irrespective of whether such person is also a producer or a cooperative association of producers, who engages in such handling of milk or cream for bottling purposes disposed of in the marketing area as is in the current of interstate commerce in milk and its products.

(7) The term "market administrator" means the person designated pursuant to Sec. 2 as the agency for the administration hereof.

(8) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

Sec. 2 Market administrator (a) Designation. The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) Powers. The market administrator shall:

(1) Administer the terms and provisions hereof; and

(2) Report to the Secretary complaints of violations of the provisions hereof.

(c) Duties. The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Pay, out of the funds provided by Sec. 9, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office;

(3) Keep such books and records as will clearly reflect the transactions provided for herein, and surrender the same to his successor or to such other person as the Secretary may designate;

(4) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 2 days after the date upon which he is required to perform such acts,

has not (a) made reports pursuant to Sec. 3 (b) made payments pursuant to Sec. 8;

(5) Promptly verify the information contained in the reports submitted by handlers; and

(6) Check weight and butterfat test of milk received from producers by each handler each month and report the results of the butterfat tests to producers or to their cooperative association. The market administrator may designate an independent agency to check the weight and butterfat test of milk received by handlers.

Sec. 3 Reports of handlers. (a) Submission of reports. Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 6th day after the end of each delivery period (a) the receipts of milk at each plant from producers, and the weighted average butterfat test thereof, (b) the receipts of milk at each plant from handlers and cooperative associations, and the average butterfat test thereof, (c) the receipts of cream at each plant from handlers and cooperative associations, and the average butterfat test thereof, (d) the receipts at each plant of the milk, if any, produced by him, and the average test thereof, (e) the receipts of milk at each plant from new producers, and the average test thereof, (f) the name and address of each new producer, (g) the utilization of all milk and cream received, computed pursuant to Sec. 4 (d), and (h) the names of handlers from whom or to whom milk or cream was received or delivered.

(2) Within 10 days after the market administrator's request with respect to any producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveries were made.

(3) On or before the 15th day after the end of each delivery period, at the request of the market administrator, his producer pay roll, which shall show (a) the total delivery of milk for each producer with the average butterfat test thereof, (b) the net amount of payment to each producer made pursuant to Sec. 8, and (c) any deductions and charges made by the handler, and authorizations therefor.

(b) Verification of reports. Each handler shall provide the market administrator or his agent with reasonable access to:

(1) Those records and facilities which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and for the verification of the payments required by Sec. 5 and Sec. 8;

(2) Those facilities necessary for the checking of the weighing and sampling of the milk and for determining the utilization of milk by the handler; and

(3) The plants and storage facilities under his control.

Sec. 4 Classification of milk. (a) Basis of classification. All milk purchased or received by a handler from producers, new producers, cooperative associations, and other handlers, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) Classes of utilization. Except as provided in paragraph (c) of this section, the classes of utilization of milk shall be as follows:

(1) Class I milk - All milk disposed of for consumption in fluid form, such as fluid milk, fluid cream, skim milk, and flavored milk drinks, and all milk the utilization of which is not classified in Class II.

(2) Class II milk - All milk used in the manufacture of products not disposed of for consumption in fluid form, and all milk specifically accounted for as actual plant shrinkage but not to exceed 2 percent of the total receipts of milk from producers.

(c) Interhandler sales. Milk, skim milk, and cream delivered by a handler to another handler shall be Class I milk: Provided, That if a different classification is agreed upon in writing between the receiving handler and the selling handler then the milk, skim milk, and cream shall be classified according to such written agreement: Provided, That is no event the amount so reported in any class be greater than the amount used in that class by the receiving handler.

(d) Computation of the volume of milk to be accounted for by the handler in each class. For each delivery period, the market administrator shall compute for each handler the volume of milk that he is to account for in each class as follows:

(1) Class I milk - Multiply the weight of the various units disposed of by such handler which are classified as Class I milk by the number of units irrespective of butterfat test thereof, add thereto the pounds of Class I milk delivered to other handlers, and classified pursuant to paragraph (c) of this section, and add the pounds of milk specifically accounted for as actual plant shrinkage in excess of 2 percent of the total receipts of milk from producers.

(2) Class II milk - The total pounds of milk received from producers minus the pounds of milk accounted for in Class I.

Sec. 5 Minimum prices. (a) Class prices. Each handler shall pay not less than the following prices, at the time and in the manner set forth in Sec. 8.

- (1) Class I milk - \$ per hundredweight; and
- (2) Class II milk - An amount per hundredweight equal to the combined value of butterfat and skim milk computed as follows:

(i) Butterfat - Add all market quotations (using midpoint of any weekly range as one quotation) of prices for a 40-quart can of sweet cream approved for Pennsylvania only, and for Pennsylvania, Newark, and lower Merion Township, in the Philadelphia, Pennsylvania, market, reported for each week ending within the month by the United States Department of Agriculture, divide by the number of quotations, subtract 28 cents, divide by 33.48, multiply by 4, and subtract 23 1/2 cents.

(ii) Skim milk - Any plus amount which is equal to 7.5 times the average of all the hot roller process dry skim milk quotations for "other brands, animal feed" and for "other brands, human consumption", carlots, bags, or barrels, in both cases (using midpoint of any range as one quotation) as published for such month in the "Producers Price Current", less 4.5 cents.

Sec. 6 Application of provisions. No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers or an association of producers, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.

Sec. 7 Determination of prices to producers. (a) Net pool obligations. The net pool obligations of each handler for milk received from producers during each month shall be a sum of money equal to the hundredweight of milk in each class, determined pursuant to Sec. 4, for each handler, times the prices applicable thereto pursuant to Sec. 5.

(b) Computation of the uniform price. The market administrator shall compute the composite price per hundredweight, f.o.b. handlers' bottling plants, for each delivery period as follows: add the values determined pursuant to paragraph (a) of this section for all handlers and divide by the total hundredweight of milk received from producers by such handlers.

(c) Announcement of prices to be paid producers and of other market information. The market administrator shall mail to all handlers and shall publicly announce, on or before the 9th day after the end of each delivery period, the composite price for milk containing 4 percent butterfat to be paid producers for milk received from them during such delivery period, as determined in accordance with paragraph (b) of this section.

Sec. 8 Payments to producers. (a) (1) Seminmonthly payments. On or before the 20th day of each month each handler shall make a payment to producers for milk delivered during the first 15 days of such month at not less than the uniform price during the preceding month.

(2) Final payment. On or before the 12th day after the end of each month each handler shall make full payment, subject to paragraphs (b) and (f) of this section, to each producer for the total value of milk received from such producer during such month at not less than the uniform price per hundredweight computed pursuant to Sec. 7, after taking credit for payment made pursuant to Sec. 8 (a) (1).

(b) Butterfat differential. If any handler has purchased or received from any producer or association of producers during the delivery period milk having an average butterfat content other than 4 percent, such handler in making the payments pursuant to paragraph (a) of this section to such producer shall add to the uniform price for such producer or association of producers for each one-tenth of 1 percent of average butterfat content above 4 percent of average butterfat content and shall subtract from the uniform price for such producer or association of producers for each one-tenth of 1 percent of average butterfat content below 4 percent not more than 4 cents per hundredweight. The butterfat content of milk received shall be determined by taking the average of not less than 5 separate butterfat tests made from fresh samples during each delivery period. The market administrator may designate an independent laboratory to make these tests. If a laboratory is not designated by the market administrator, these tests may be conducted by an independent laboratory agreed upon by the handlers and the producers, in which case the expense of such butterfat testing shall be borne jointly and equally by each handler and each producer delivering to him, and the producers' share may be deducted from the amount paid them by handlers, provided the handler shall be responsible for any errors in these tests.

(c) Producer-settlement fund. The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (d) and (g) of this section and out of which he shall make all payments to handlers pursuant to paragraphs (e) and (f) of this section.

(d) Payments to the producer-settlement fund. On or before the 12th day after the end of each delivery period, each handler shall pay to the market administrator, for payment to producers through the producer-settlement fund, the amount by which his net pool obligations computed pursuant to Sec. 7 (a) exceed the sum obtained by multiplying the hundredweight of milk received from producers by the uniform price announced pursuant to Sec. 7 (c).

(e) Payments out of producer-settlement fund. On or before the 12th day after the end of each delivery period, the market administrator shall pay to each handler, for payment to producers, the amount, if any, by which the sum obtained by multiplying the hundredweight of milk received from producers by the uniform price announced pursuant to Sec. 7 (c) exceeds his net pool obligations pursuant to Sec. 7 (a).

If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 12th day after the end of each delivery period, has not received the balance of such reduced payment from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund. Nothing in this paragraph shall abrogate the right of a cooperative association to make payment to its member producers in accordance with the payment plan of such cooperative association.

(f) Adjustment of errors in payments. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that the payment is due from the market administrator to any handler pursuant to paragraph (e) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

Sec. 9 Expense of administration. (a) Payments by handlers. As his prorata share of the expense of the administration hereof, each handler, except those handlers exempted pursuant to Sec. 6 shall pay to the market administrator on or before the 12th day after the end of each delivery period an amount equal to 4 cents per hundredweight with respect to all milk received by him from producers, or produced by him during such delivery period, or such lesser amount, the exact amount to be determined by the market administrator, subject to review by the Secretary. If the market administrator designates an independent agency to determine the butterfat content of milk received by handlers from producers as permitted under Sec. 8 (c) each handler shall pay to the market administrator an amount equal to not more than 7-1/2 cents per test, the exact amount to be determined by the market administrator: Provided, That one-half of any amount collected for such tests of any producer's milk may be deducted from the payments handlers are required to make the respective producers under Sec. 8.

(b) Marketing services. If the market administrator designates an independent agency to determine the butterfat content of milk received by the handlers from producers as permitted under Sec. 8 (c) each handler shall deduct from his payments to each producer an amount equal to not more than 7-1/2 cents per test the exact amount to be determined by the market administrator and shall pay such deduction to the market administrator on or before the 15th day after the end of each delivery period. Such moneys shall be used by the market

administrator to pay the independent laboratory for the verification of weight, sampling, and testing of milk received from producers.

(c) Suits by market administrator. The market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense set forth in this section.

Sec. 10 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

Sec. 11 Effective time, suspension, and termination.

(a) Effective time. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to paragraph (b) of this section.

(b) Suspension and termination. Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) Continuing power and duty. If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder the final accrual or ascertainment of which requires further acts by any handlers, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The market administrator, or such other person as the Secretary may designate (1) shall continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant hereto.

(d) Liquidation after suspension or termination. Upon the suspension or termination of any or all provisions hereof, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds

which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Sec. 12 Liability. (a) Liability of handlers. The liability of the handlers hereunder is several and not joint, and no handler shall be liable for the default of any other handler.

(The following provisions are applicable to the marketing agreement only)

Sec. 13 Counterparts and additional parties. (a) Counterparts of marketing agreement. This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument, as if all such signatures were obtained in one original.

(b) Additional parties to marketing agreement. After this agreement first takes effect, any handler may become a party to this agreement if a counterpart thereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Copies of the proposed marketing agreement and order may be procured from the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, in Room 1019 South Building, Washington, D.C., or may be there inspected.

/s/ Thomas J. Flavin
Assistant to the Secretary

Acting pursuant to authority
delegated by the Secretary of
Agriculture under the Act of
April 4, 1940 (54 Stat. 81;
7 FR 2656)

Dated: July 30, 1942

Washington, D. C.

